United States Court of Appeals

for the Second Circuit

REPLY BRIEF

74-2614
74-2657
75-7010

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellant,

v.

GEON INDUSTRIES, INC., et al.,

GEON INDUSTRIES, INC., and
GEORGE O. NEUWIRTH,

Defendants-Appellants,

FRANK BLOOM and EDWARDS & HANLY,

Defendants-Appellees.

On Appeal from the United States District
Court for the Southern District of New York

REPLY BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION

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Washington, D.C. 20549

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 74-2614, 74-2657, and 75-7010

SECURITIES AND EXCHANGE COMMISSION,

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v.

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REPLY BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION

I. REPLY TO ANSWERING BRIEF OF EDWARDS & HANLY.

A. Edwards & Hanly's Answering Brief Does Not Refute the Commission's Basic Argument That the Firm Is Responsible for Securities Law Violations of Its Registered Representative That Occurred within the Scope of His Employment.

In its answering brief, Edwards & Hanley does not contest the fact that its registered representative, defendant Marvin Rauch, violated the federal securities laws when, in the course of his employment, he engaged in the purchase and sale of securities utilizing

material, nonpublic information. Nor does the answering brief contest the stipulation made by its counsel that Edwards & Hanly "received commissions in all customer purchases and sales in Geon common stock at the Hewlett Office of Edwards & Hanley for the period October 1, 1973 through February 21, 1974" (IV. 579).[1/] Edwards & Hanly argues, however, that it would be unfair to hold the brokerage firm accountable for the illegal misconduct of its registered representative, since "every broker-dealer of any substantial size would necessarily within a short time after opening for business incur liability for its salesmen's acts"; and states it is "impossible for a brokerage firm of any size to prevent a wrongful act from occurring" (Br. 32).

The answering brief nowhere discusses United States v. A & P Trucking Co., 358 U.S. 121 (1958). As pointed out in our opening brief (p. 35), that case holds an unincorporated partnership to be liable for the illegal acts of its employees occuring within the course of their employment, even though the partners neither knew about nor participated in the misconduct. 385 U.S. at 126-127. There is no reason to assume that truck drivers are more easily supervised than securities salesmen.

Contrary to the A & P Trucking Co. case, Edwards & Hanly implicitly argues that it should "with impunity obtain the fruits of

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1/ The abbreviations utilized in this brief are the same as those used in the Commission's opening brief. See SEC Brief 6 n.2. In addition, references to the Supplemental Appendix are denoted as "Sup. App. ___."

violations which are committed knowingly by agents of the entity in the scope of their employment." 358 U.S. at 126. We recognize in this connection that Edwards & Hanly suggests (Br. 14) that it reversed the illegal transactions and thus did not retain the fruits of its violations, but a holding by this Court that Edwards & Hanly is not responsible for the violations of its employees could sanction its refusal to reverse similar transactions on a future occasion. Moreover, it appears that by cancelling certain purchases by its arbitrageurs, Edwards & Hanly gained more than it lost by reason of the customer transactions.[2/]

B. Edwards & Hanly Relies upon a Statutory Provision That Is Inapplicable to an Injunction Proceeding Brought by the Commission.

Edwards & Hanly relies heavily (Br. 26-31) upon Section 15(b)(5)(E) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(5)(E), which concededly (Br. 28) "by its terms applies only to administrative proceedings." It, nevertheless, argues that this section, which provides a limitation on persons who "shall be deemed to have failed reasonably to supervise . . ."

2/ Edwards & Hanly states (Br. 14) that it sustained a loss of approximately $12,500 because the firm "broke the street-side of the trades and absorbed 3,000 shares [of Geon] into its error account." Edwards & Hanly's Exhibit J (I. 155a-156a) shows that purchases totaling 5,100 shares by Ivan Boesky, the manager of the arbitrage department for Edwards & Hanly (V. 813), during the one and one-half hours of trading on February 2, 1974, for a total of $70,762, were cancelled on March 3, 1974. Presumably all these shares had been sold by Mr. Rauch, and the firm had forced this cancellation (IV. 691-693; V. 833-836). On March 3 the firm also sold the shares it had bought back from other customers; this was at a price of 9-7/8 (V. 796). At that price the 5,100 shares that Mr. Rauch had sold would be valued at $50,359. Thus, by the cancellation of these transactions with Mr. Rauch, the firm saved $20,403, which should be measured against its $12,500 loss in reversing the transactions with its customers.

other persons for the specific purposes of Clause (E), should be construed to create a standard of liability in civil injunctive actions where the Commission seeks the "mild prophylactic relief" of an injunction.[3/] A substantially-similar argument was rejected in Armstrong Jones & Co. v. Securities and Exchange Commission, 421 F. 2d 359, 361-362 (C.A. 6), certiorari denied, 398 U.S. 958 (1970).[4/] Such an argument is also inconsistent with this Court's holding in Securities and Exchange Commission v. Spectrum, Ltd., 489 F. 2d 535, 541 (C.A. 2, 1973), that no showing of actual knowledge or intent to assist violations need be made "in the context of enforcement proceedings [by the Commission] seeking equitable or prophylactic relief."

Contrary to Edwards & Hanly's argument (Br. 28-30), the legislative history of the 1964 Amendments to the Securities Exchange Act, which added Clause (E) to Section 15(b)(5), nowhere suggests that it was intended to affect the provisions of Section 21(e) of that Act, 15 U.S.C. 78u(e), or Section 20(b) of the Securities Act of 1933, 15 U.S.C. 77t(b), pursuant to which sections this action was commenced. Subsection (E) was drafted to provide "an additional basis for disciplinary action by the Commission,"[5/] and the Commission had represented to the Congress

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3/ Securities and Exchange Commission v. Capital Gains Research Bureau, 375 U.S. 180, 193 (1963).

4/ Its registration permanently revoked, Armstrong Jones petitioned the Sixth Circuit for a review of the Commission's order, arguing, inter alia, that, since the violations involved only "the sales manager and various salesmen," Section 15(b)(5)(E) prohibited "the attribution to it of the employees' wrongful conduct." 421 F. 2d at 361-362. The court of appeals rejected that argument, however, holding that Section 15(b)(5)(E) "does not limit the Commission's power to discipline a broker-dealer for its employees' acts." Id.

5/ S. Rep. No. 379, 88th Cong., 1st Sess. 45 (1963) (hereinafter cited as S. Rep. No. 379).

that its enactment "would not limit the existing power of the Commission to discipline a broker or dealer firm under the doctrine of respondeat superior for any violation by a person associated with such broker or dealer."[6/] This pre-existing authority was also recognized in the Senate Report to the 1964 Amendments, which acknowledged that a brokerage firm could be disciplined when one of its employees "violates the law without the approval of, or perhaps without the knowledge of, his employer . . . ."[7/]

The quotation to the testimony of then Chairman Cary by Edwards & Hanly (Br. 28-29) in connection with its Section 15(b)(5)(E) argument, in which Chairman Cary acknowledged the "awkward" and possibly "unfair" nature of the then existing disciplinary authority[8/] of the Commission had nothing to do with Section 15(b)(5)(E). Chairman Cary was testifying on a proposed subparagraph (7) to Section 15(b),[9/] which would--and

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6/ Technical Statement of the Securities and Exchange Commission Relating to S. 1642, Hearings Before a Subcommittee of the Committee on Banking and Currency of the United States Senate, 88th Cong., 1st Sess. 352, 364 (1963) (hereinafter cited as "Technical Statement").

7/ S. Rep. No. 379 at 44. See also id. at 76.

8/ Wallach v. Securities and Exchange Commission, 202 F. 2d 462 (C.A. D.C., 1953), had held that an administrative procedure followed by the Commission up to that time was beyond the Commission's authority and suggested that the Commission might "be able to convince Congress that the improvised administrative procedure . . . that the Commission had previously used should be adopted." By Paragraph 7 of Section 15(b), Congress adopted that procedure. See H. Rep. No. 1418, 88th Cong., 1st Sess. 22-23 (1963); Technical Statement at 364-365.

9/ Hearings Before a Subcommittee of the Committee on Banking and Currency of the United States Senate on S. 1642, 88th Cong., 1st Sess. 47 (1963); Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives on H.R. 6789, H.R. 6793 and S. 1642, 88th Cong., 1st Sess. pt. 1 129 (1963).

subsequently did--give the Commission jurisdiction over "any person" where the public interest might necessitate administrative disciplinary action. Accordingly, Chairman Cary's reference to "unfairness" in the then-existing disciplinary procedure referred to the statutory restriction that required the Commission to discipline only an entire broker-dealer firm, as distinguished from its individual members or employees.

Finally, Edwards & Hanly argues (Br. 35) that Section 15(b)(5)(E) somehow can be made applicable to a Commission injunction by reason of Section 20(a) of the Securities Exchange Act, 15 U.S.C. 78t, which provides a "good faith" defense for a controlling person sought to be held jointly and severally liable with a controlled person under that provision. But as this Court held in Securities and Exchange Commission v. Management Dynamics, ___ F. 2d ___, CCH Fed. Sec. L. Rep. ¶95,017 (C.A. 2, 1975), "the 'controlling person' provision [of Section 20(a)] was enacted to expand, rather than restrict, the scope of liability under the securities laws."

C. Edwards & Hanly Relies upon Materials That Are Not in the Record and Misstates Certain Material in the Record.

Although counsel for Edwards & Hanly avers that the Commission's appeal is "premised upon a misapprehension of the facts" and constitutes a "distortion of the record" (Br. 16, 40), the Commission's brief meticulously provides record support for its facts; no comparable statement can be made respecting the Edwards & Hanly brief. It grounds the firm's defense on the existence of "detailed compliance manuals" (Br. 8-9), which were not admitted into evidence and which Edwards & Hanly's

counsel concedes "are not part of the record on appeal."[10/]

"It is 'hornbook law' that a court of appeals may consider only facts of record, and it is the record alone which controls the facts." United States v. Addonizio, 449 F. 2d 100, 103 (C.A. 3, 1971). See also New Haven Inclusion Cases, 399 U.S. 392, 450 n.66 (1970); Schley v. Pullman Car Co., 120 U.S. 575, 578 (1886); Bono v. United States, 113 F. 2d 724, 725 (C.A. 2, 1940). Accordingly, since Edwards & Hanly's substantive defense rests on the existence of its compliance manuals (Br. 8-9), and these were not part of the record in the court below and are not part of the record in this Court, there is no basis for this Court to consider that defense, United States v. Addonizio, supra; Thomson v. Gaskill, 315 U.S. 442, 445 (1942); Del Rey Air v. Expressway Airpack Inc., 468 F. 2d 187, 189 (C.A. 10, 1972), and the district court's reliance upon the existence of the compliance manuals (I. 68a) is reversible error.

When it does refer to material in the record, the Edwards & Hanly brief is in some instances misleading. Thus, with respect to transactions made by Mr. Rauch after an Edwards & Hanly supervisory partner instructed Mr. Rosenfeld not to permit additional accumulations of Geon shares during the so-called "red light" period, the brief states (p. 18, emphasis supplied):

> ". . . Mr. Rosenfeld permitted Mr. Rauch to continue to solicit purchases of Geon during the so-called 'yellow light' period (IV. 659) and not during the 'red light' period (IV 660-663)."

10/ Letter from Evan L. Gordon, Esq., to Van P. Carter, Esq., dated February 18, 1975, a copy of which is attached hereto as Exhibit A.

But Mr. Rosenfeld testified (IV. 666, emphasis supplied):

"Q. During this period did Mr. Rauch continue, during the red light period, did Mr. Rauch continue to solicit Geon purchases for the customer accounts?

A. Yes.

Q. Margin accounts as well?

A. Yes.

THE COURT: He would bring the tickets to you; is that right?

A. Yes, sir.

THE COURT: And the order wouldn't be executed until you had indicated they were okay; is that right?

A. Yes, your Honor.

THE COURT: And did his position increase during this period?

A. Yes, your Honor." 11/

Edwards & Hanly also suggests (Br. 18) that Mr. Rauch was not "given privileges not available to other registered representatives." But the manager and resident partner of Edwards & Hanly's Hewlett Office, Mr. Rosenfeld, testified that Mr. Rauch requested "special treatment or special favors" and that he was "interested in building him [Mr. Rauch] up because he looked like a pretty good fellow to build up." (IV. 609-611.) Moreover, while purchase and sell orders for other salesmen were normally transmitted by teletype (IV. 685-686), Mr. Rauch "liked to call in orders to our [Edwards & Hanly's] main wire room" (IV 609) and this

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11/ In addition, SEC Exhibit 17 (I. 109a-111a) reflects that during the "red light" period, which commenced in mid-November 1973 and concluded on December 3, 1973 (IV. 672; V. 779), Mr. Rauch made 23 purchases of Geon stock for his customers, totaling 7,500 shares, one purchase for "Rosa Rauch" of 200 shares and one purchase in the name of "Rauch" for 500 shares.

procedure for him, which required specific approval by Mr. Rosenfeld or by Mr. Lynn, the assistant manager, was "commonplace" (IV. 614).

The brief also states (p. 20) that the firm's "supervisory manual requires a branch manager to spot-check the accuracy of the information provided in the new account report (IV. 615)." No support for this statement appears at the page cited. Mr. Lynn testified, however, that it was the "function of the back office" to fill in the new account cards and that "spot-checks," if performed at all, were made by a secretary. (V. 738-739.)

Contrary to the brokerage firm's representation (Br. 25), the Commission does not contend "that there were no guidelines of E & H concerning contacts between registered representatives of the firm and officers and directors of publicly traded companies." The Commission merely stated (Br. 28) that Mr. Lynn could not recall any specific guidelines, a statement that Mr. Lynn's testimony supports (V. 732); and that Mr. Rosenfeld suggested that the only restrictions on such contacts were that a registered representative could not claim to be an investment adviser or a securities analyst, to which Mr. Rosenfeld testified (IV. 643-644).[12/] Certainly no restriction succeeded in curtailing Mr. Rauch's transactions on the basis of material nonpublic information.

D. The District Court Erred in Refusing To Admit the Commission's Investigative Transcripts.

While we have shown why Edwards & Hanly should be enjoined even without reference to the investigative transcripts, we believe those

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12/ Mr. Rosenfeld did remember procedures in this regard being "clarified" in March 1974, after, and as a result of, the misconduct in this case (V. 643-644).

transcripts should have been admitted because they would have helped the court to assess the credibility of various witnesses testifying as to the activities of Edwards & Hanly. Nowhere does the answering brief contest the fact that Mr. Rauch's investigative transcripts constitute a declaration against interest and an admission against a party opponent.[13/] At the time he testified, Mr. Rauch was a salesman of Edwards & Hanly and therefore his testimony should have been considered an admission against it.

It is true that Edwards & Hanly did not have an opportunity to cross-examine Mr. Rauch when he testified. This Court has acknowledged, however, that where a witness renders himself unavailable for cross-examination by invoking his Fifth Amendment privilege, whether testimony previously given on direct examination remains a part of the record depends upon the facts of each case and requires a balancing of the relative interests of the opposing party against the ends of justice that might be facilitated if the testimony is permitted to remain a part of the record. United States v. Marcus, 401 F. 2d 563, 566 (C.A. 2, 1968), certiorari denied, 393 U.S. 1023 (1969); United States v. Cardillo, 316 F. 2d 606, 611-613 (C.A. 2, 1962), certiorari denied, 375 U.S. 822 (1963). Accordingly, where there are "competing considerations . . . of equal magnitude," previous testimony, given without an opportunity for cross-examination, may be received into evidence (see Treharne v. Callahan, 426 F. 2d 58, 62 (C.A. 3, 1970)), with the lack of cross-examination bearing upon the credibility of the witness. See United States v.

13/ See SEC Brief 43-44.

Cardillo, supra, 316 F. 2d at 611.

In this connection, Mr. Rauch testified under oath in the Commission's investigation while accompanied by his counsel (Supp. App. 68-72, 137-140). At the conclusion of his testimony Mr. Rauch was accorded an opportunity to make any clarifying statement that he deemed appropriate and his counsel was given an opportunity to question Mr. Rauch on the record (Supp. App. 230-231). Accordingly, under the facts of this case, we submit that the trial court should not have rejected the tender of these investigative transcripts.

II. REPLY TO ANSWERING BRIEF OF FRANK BLOOM.

Frank Bloom's Answering Brief Fails To Respond to the Commission's Argument That His False Answers to the Exchange Permitted Trading in Geon Stock To Commence When That Stock Should Not Have Been Traded Because of the Uncertainty Concerning the Proposed Merger.

Mr. Bloom's answering brief misconstrues the Commission's theory of liability and raises illusory issues[14/] in an attempt to shield Mr. Bloom's otherwise defenseless misconduct. Contrary to the representations in Mr. Bloom's answering brief (p. 16), the "gravamen" of the Commission's appeal is not based upon Mr. Bloom's "knowledge of adverse facts concerning Geon's income"; nor does the Commission argue that Mr. Bloom violated Section 10(b) and Rule 10b-5 by failing to

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14/ Thus, Mr. Bloom's brief (pp. 23-24) relies on excerpts of newspaper articles that are not part of the record on appeal suggesting that Mr. Gromet, an officer of the stock exchange who testified in this case, may have violated the federal securities laws in other unspecified matters, although he has apparently had no hearing or trial with respect thereto. Cf. New Haven Inclusion Cases, 399 U.S. 392, 450 n.66 (1970).

"disseminate" information about Geon's realized and potential accounting errors (Br. 21-24). Mr. Bloom violated the antifraud provisions of the securities laws through his false and misleading statements to the American Stock Exchange representative--statements that induced the exchange to lift its trading suspension of Geon stock at a time when the exchange was attempting to determine whether there was reason to continue that suspension.

Mr. Bloom's brief (pp. 10-11) admits that the district court correctly found that he attended Geon's Board of Directors' meeting conducted on February 21, 1975, and reported on the preliminary accounting errors. The brief also concedes (p. 10) that it "was agreed at the board of directors meeting . . . that the discussion be kept in the utmost confidence" in the light of "the importance of the pending transaction with Burmah." Nor does Mr. Bloom's brief deny the fact that on February 21, 1975, he was concerned about the potential accounting errors because the $800,000 shortfall would have brought the company "below the minimum income requirement in the acquisition contract" (II. 118) and would have had "a material effect either on the ability [of Geon] to complete the Burmah deal or the price at which the deal could be done" (IV. 500; II. 126). Moreover, while the $800,000 accounting error may have seemed "ridiculous" to Mr. Bloom at 12:15 A.M. on the morning of February 22, 1974 (Bloom Br. 9, 11), at the time of his conversation with Mr. Gromet at about 9:30 that same morning the court below found, as emphasized in Mr. Bloom's brief (pp. 19, 20), that Mr. Bloom was merely "uncertain about the accuracy of the figures . . . ." (I. 65a; II. 159).

Mr. Bloom's brief (pp. 10-11) further acknowledges that he was called on the telephone on February 22, 1974, by Mr. Gromet of the American Stock Exchange and advised that "there was an imbalance of sell orders in Geon Stock" (I. 64a). Accordingly, whether an actual imbalance existed is essentially irrelevant, since both men assumed there was one (II. 135; III. 366,369).[15/] Further, Mr. Bloom's own testimony establishes that Mr. Gromet asked him (II. 135-137):

(i) "whether there was a problem with the Burmah deal,"

(ii) "if there was a problem with the company,"

(III) "about the status of the deal,"

(iv) "whether there was anything pending with respect to the deal that would account for the imbalance of orders," and

(v) "if the company had any announcement to make."

Mr. Bloom does not challenge the district court's findings that he "said that there was no change in the status of the proposed merger transaction," and "that there were no developments at the company which would account for the sell orders," and his own testimony supports these findings (II. 135-137). Accordingly, both the district court's uncontested

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15/ Mr. Bloom's brief represents that there was no imbalance of sell orders since the arbitrageurs were willing to purchase all the Geon shares offered for sale (Bloom Br. 21). Apparently the fact that arbitrageurs may have been willing to purchase all Geon shares offered for sale was not considered by the officials of the stock exchange as permitting trading to commence when the sell orders submitted prior to the opening so substantially exceeded the usual pre-market offerings that the situation was "out of the ordinary" (III. 366-367), suggesting "corporate developments pending at the company that would account for the activity" (IV. 450-451).

findings and Mr. Bloom's own testimony render nugatory the representation in his brief (p. 25, emphasis supplied) that he declined to release "any information . . . ." He did give answers to the Exchange which were false at a time when it was endeavoring to determine whether a suspension of trading in Geon should be continued.[16/]

There is no disagreement with the findings of basic fact, as to which the "clearly erroneous" rule would apply; the district judge erred, however, in his understanding of the legal standard to be applied to these facts by assuming that Mr. Bloom's liability was contingent upon Geon's duty to issue a public announcement of its verified and potential accounting errors. He failed to recognize that Mr. Bloom's misrepresentations were the causal link to the commencement of trading in Geon stock on the American Stock Exchange, just as in the Texas Gulf case he failed to realize that trading in securities by persons knowing of the first drill hole--which did not establish a mine--violated Rule 10b-5, Securities and Exchange Commission v. Texas Gulf Sulphur Co., et al., 401 F. 2d 833, 850-851 (C.A. 2, 1968).

Moreover, whatever doubt Mr. Bloom may have had as to the $800,000 earnings shortfall, he was then satisfied that there was a $314,000 accounting error (II. 129). Since Geon had previously released a statement of its earnings for the first nine months of 1973 (SEC Exhibit 14; I. 90a-

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16/ Previously, on December 20, 1973, a telephone call had been made to Mr. Gromet on behalf of Geon, of which Mr. Bloom was presumably aware (II. 67-68; IV. 577), which "requested a delay in the opening of trading of Geon's common stock in order that Burmah could approve the text of a press release announcing that an agreement in principal had been reached with Burmah for the acquisition of Geon . . ." (IV. 577).

94a) that was presumably affected by the verification of the $314,000 accounting error (II. 82-83, 96-97), at the very least Mr. Bloom, who was the Geon officer named in that release to be called for further information, might have taken the opportunity to advise the exchange of that correction and receive the exchange's views whether this should not have been made public if trading were to continue.[17/]

The conduct of Geon's counsel does not provide Mr. Bloom with a "safe harbor"[18/] for his misrepresentations but, to the contrary, underscores the illegal nature of his misconduct. Geon's counsel had a 30-second conversation with Mr. Bloom during which counsel, unaware of the trading imbalance, advised Mr. Bloom to tell Mr. Gromet "that the company had no public announcement to make" (IV. 528-529). He did not tell Mr. Bloom to lie in answering questions that the stock exchange representative might ask him. While it is suggested in the brief (p. 27) that the lawyer's, Mr. Friedman's, advice would have been the same had he known the specific questions that would be addressed to Mr. Bloom, it is interesting that only an hour and one-half later one of Mr. Friedman's partners did the very thing that Mr. Bloom failed to do;

17/ On at least one previous occasion, the exchange's advice had been accepted by Geon. Several months earlier, when Mr. Gromet had called Mr. Bloom because the "Geon Industries stock was active" but "there was no recent news to account for the activity," Mr. Bloom advised Mr. Gromet "that the company was in preliminary discussions with Burmah" regarding a merger (III. 390). This occurred after the closing of the market on Friday, November 30, 1973, and, in accordance with Mr. Gromet's suggestion to Mr. Bloom, the company made a public announcement to that effect before the market opened the following Monday (SEC Exhibit 1; I. 75a; III. 391-392).

18/ Cf. Michell v. Blanchard, 272 F. 2d 574, 577 (C.A. 5, 1959).

he told the exchange the truth so that trading would be suspended.[19/] The accounting errors were still unverified and "equally uncertain" when Geon's counsel told the exchange the facts that Mr. Bloom had denied. Accordingly, it is strange that this same law firm now seems to think that had the exchange been told what Mr. Bloom failed to tell them it would have resulted in "horrendous consequences" (Br. 28). The "horrendous consequences" occurred because of Mr. Bloom's lies--insiders and their tippees unloaded at prices paid by innocent third parties while the stock was going down from about 14-3/8 to about 12 dollars per share during the hour and one-half period of trading resulting from Mr. Bloom's misstatements (IV. 454-455).

19/ When counsel noted that the market price in Geon's stock was decreasing on heavy volume, the firm immediately telephoned the American Stock Exchange (IV. 534-537), requested a suspension of trading, and

> "reported as briefly as possible the information, the status of the information which came out of the board meeting yesterday, the status of its uncertainty, the fact that they were--the stock was dropping precipitously, and in this situation that it appeared the proper thing to stop trading, without knowing what in fact had happened, that the trading ought to be stopped." (IV. 536.)

CONCLUSION

For the foregoing reasons and those set forth in our earlier brief, the order of the court below should be reversed insofar as it dismissed the Commission's complaint against Frank Bloom and Edwards & Hanly.

Respectfully submitted,

LAWRENCE E. NERHEIM
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June 1975.

EXHIBIT A

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February 18, 1975

Van P. Carter, Esq.
Office of the General Counsel
Securities and Exchange Commission
Washington, D. C. 20549

Re: Securities and Exchange Commission
v. Geon Industries, Inc.,
Civil Appeal Nos. 75-7010, 76-2657
and 74-2614.

Dear Mr. Carter:

The appellee, Edwards & Hanly, designates the entire transcript of proceedings as the same affects Edwards & Hanly, to wit, pages 577 through 844, inclusive, and Edwards & Hanly Exhibits "G", "H", "I" and "K" for designation in the joint appendix.

We further take note of your comment that you have requested us to supply you with the Edwards & Hanly compliance manuals. You have advised us that you desire to review these manuals to see if parts of them should be included in the record on appeal. As we advised you, these manuals were marked for identification at our request and were not accepted into evidence. Thus, they are not part of the record on appeal. We accordingly see no need to provide you with copies.

Very truly yours,

DELSON & GORDON

Evan L. Gordon

ELG/nns

cc: Jay G. Strum, Esq.

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

June 9, 1975

A. Daniel Fusaro, Esquire
Clerk, United States Court of
Appeals for the Second Circuit
United States Courthouse
Foley Square
New York, New York 10007

Re: Securities and Exchange Commission v. Geon Industries, Inc.,
Civil Appeal Nos. 75-7010, 74-2657 and 74-2614

Dear Mr. Fusaro:

Enclosed for filing with the Court are 25 copies of the Commission's reply brief in No. 75-7010 as well as 25 copies of the Commission's answer to the brief of appellant, George Neuwirth (No. 74-2614) and Geon Industries, Inc. (No. 74-2657).

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that two copies of each brief have been transmitted by first-class mail on this date to the following opposing counsel:

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Sincerely,

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Attorney

cc: Jay C. Strum, Esq.
Evan L. Gordon, Esq.